IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10120 of 1998

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Petitioner(s)

Versus

SOMABHAI SHIVABHAI & 7 - Respondent(s)

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Appearance :

GMR KL PANDYA A.G.P. for Petitioner No(s).: 1,2.

MR PC MASTER for Respondent No(s).: 1, 2, 3, 4, 5, 6, 7,8.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 18/07/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and order dated 27th November, 1989 passed by the Labour Court, Nadiad in Reference [L.C.N.] No. 484 of 1989 whereby the Labour Court has directed the petitioner State to reinstate the respondent workmen on their

original post with continuity in service along with full back wages.

2. The short facts of the case are that the respondent workmen were working as daily wagers with the petitioner State. They had been working as such for the last four years. However, without following due procedure under the law, the services of the respondent workmen came to be terminated w.e.f. 19th April, 1989.

2.1. Feeling aggrieved by the said order, the respondent workmen raised an industrial dispute which was ultimately referred to the Labour Court, Nadiad for adjudication. The Labour Court after considering the case on merits, passed the impugned award. Hence, this petition.

3. Mr. Pandya learned A.G.P., appearing for the petitioner State has contended that the dispute raised by the respondent workmen is not covered under the definition of “Industry” and, therefore, the Labour Court ought not to have passed the impugned order. Mr. Pandya has further contended that the Labour Court has committed an error in granting reinstatement with full

back wages *inasmuch* as the respondent workmen were working as daily wagers and they themselves have abandoned the work.

4. I have heard the learned counsel for the parties and have perused the materials placed on record. While admitting this petition, this Court vide order dated 5th April, 1999 has stayed the order qua back wages with a direction to reinstate the respondent workmen in service within a period of one week. Since the respondent workmen are reinstated in service pursuant to the order of this Court, the only question which is required to be considered is with regard to grant of back wages.

4.1. However, the Labour Court while granting back wages has not given cogent reasons. Moreover in view of the principle laid down by the Apex Court “No Work No Pay”, grant of back wages was not justified. Thus, the impugned order of the Labour Court qua the back wages is required to be quashed and set aside.

5. In the result, the petition is partly allowed. The award dated dated 27th November, 1989 passed by the Labour Court, Nadiad in Reference [L.C.N.] No. 484 of

1989 qua the direction with regard to the back wages is quashed and set aside. The rest of the award is confirmed. The petitioner shall grant all the benefits from the date of the publication of the award till the payment is realized and difference of salary within a period of three months from the date of receipt of writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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